

WORLD TRADE ORGANIZATION

RESTRICTED

G/ADP/IG/W/25
22 September 2000

(00-3810)

Committee on Anti-Dumping Practices
Informal Group on Anti-Circumvention

Original: English

TOPIC 2 – WHAT IS BEING DONE BY MEMBERS CONFRONTED BY WHAT THEY CONSIDER TO BE CIRCUMVENTION?

Paper by New Zealand

The following communication, dated 20 September 2000, has been received from the Permanent Mission of New Zealand.

In our paper G/ADP/IG/W/11, New Zealand listed three cases where circumvention had been an issue, described the circumstances of each case and how it had been dealt with. Two of the cases have not necessitated any further actions. Duties on sugar from Belgium, Denmark and the Netherlands have now been revoked and duties on hog bristle paint brushes from China have been reassessed as a result of a review. From time to time the New Zealand Customs Service has had to deal with cases of incorrect origin of paint brushes from China. Any action taken has been under its own legislation (the Customs and Excise Act 1996).

One case identified in our earlier paper remains problematical - Plasterboard from Thailand. This paper repeats and updates the circumstances of this case. It should be noted that the changes to the product over time have been at the request of the New Zealand importers and not initiated by the plasterboard manufacturers in Thailand.

Plasterboard from Thailand

The New Zealand industry in this case manufactures standard plasterboard of 9.5 mm nominal thickness and in multiple widths and lengths. This board is mainly used in the domestic housing market. Other boards of varying thickness are also manufactured, with the next size up being board which is 12.5 mm thick in multiple widths and lengths. This board is used in the commercial building market and is not considered to be competing with board in the housing market. Thai manufacturers generally produce board with a thickness of 9 mm for the domestic housing market and other board of varying thickness for the commercial building market. The distinguishing feature of the board is the thickness, and standard plasterboard of any thickness within a designated range can easily be substituted for 9.5 mm board in the New Zealand market. It is not particularly difficult to produce board of varying thickness as changes to the production process are minimal.

In June 1989 the New Zealand manufacturer of plasterboard lodged an application for the initiation of an investigation against various sizes of standard and foil-backed plasterboard from Thailand. The investigation was initiated and the like goods defined as:

Standard or foil—backed plasterboard having nominal dimensions of 9 mm. or 9.5 mm. thickness, by 1,200 mm width by 2,400 mm to 3,600 mm length.

After a period of time, importers began to avoid the anti-dumping duties on some plasterboard by varying the lengths of board so that they were outside the description of the final notice, i.e. lengths shorter than 2,400 mm and longer than 3,600 mm. In particular, lengths of board measuring 4,800 mm in length were being imported and cut in half to supply the market with the most popular length board of 2,400 mm.

The New Zealand industry lodged a new application for an investigation and this was initiated and conducted into the following goods:

Plasterboard of nominal dimensions of 9 mm or 9.5 mm thickness and lengths of less than 2,400 mm and greater than 3,600 mm.

An anti-dumping duty was imposed on these goods at the same level as that applying to the first investigation.

Imports then started appearing in the market place for goods with a thickness of 10 mm. This particular board competed directly against the board of 9 mm or 9.5 mm thickness and the New Zealand industry lodged a further application, which was initiated in October 1996. The definition of the goods in this case was:

Standard plasterboard with dimensions falling between a thickness of 8.75 mm to 10.25 mm of any length or width (not including plasterboard subject to anti-dumping duty under other notices).

It was considered that this description would finally capture all plasterboard that competed directly with the goods made by the New Zealand industry, but in October 1999 board with a thickness of 10.50 mm appeared in the market. The New Zealand manufacturer has again been obliged to lodge a new case, showing that the board it manufactures is "like" the new thickness of board being imported and the imported board is dumped and is causing it material injury or threat of material injury. This case was initiated in April 2000. The description of the goods under investigation is:

Standard plasterboard with dimensions of a nominal thickness from, but not including 6 mm, and up to, but not including 12 mm, of any width or length (other than those dimensions already subject to anti-dumping duty).

The case is currently in its final stages. All interested parties have been informed of the essential facts under consideration which will form the basis for the decision whether to apply definitive measures and have been asked for their comments. It should be noted that no party has argued that 10.5 mm board is not "like" 9.5 mm board

This is an example of circumvention of the original and subsequent anti-dumping duty by way of importing goods slightly different from those stipulated in the final notices. It illustrates some of the difficulties that can arise in trying to define like goods. Reference to other countries papers show that some would deal with such circumstances under circumvention provisions, but in the absence of such laws and rules others deal with the such changes by initiating a new case.

The situation above is not unlike that described in Part 1 of the United States paper G/ADP/IG/W/20, particularly Example 2 (Silicon Metal) where it was determined that circumvention

existed. The US in this case determined that the product was within the scope of the original order even though the description appeared to cover a certain product. New Zealand practice, on the other hand, is to conduct another investigation, based on a new application by the New Zealand industry.

Questions Posed by Japan (G/ADP/IG/W/23)

I The practical importance of anti-circumvention measures against Members of the WTO

New Zealand has three cases where it has had to take action to ensure that imports of various products were being correctly imported. These cases were identified in G/ADP/IG/W/11 as being:

- Sugar from Belgium, Denmark and the Netherlands which involved "country hopping";
- Hog Bristle Paint Brushes from China which involved incorrect origin certificates; and
- Plasterboard from Thailand which involved the scope of the final determinations.

As New Zealand does not have circumvention provisions in its legislation, no special procedures were adopted in any of these cases.

II Dealing with circumvention within the framework of normal anti-dumping procedures or customs regulations

No special procedures were adopted in any of these cases. New cases were initiated in the plasterboard and sugar cases and the NZ Customs Service dealt with the incorrect origin certificates in the case of paint brushes under the Customs and Excise Act 1996.

The plasterboard case is described fully in this paper. It involves the description of like goods and variations of that description to capture new products being imported. In hindsight, if an all encompassing description of the plasterboard competing in the New Zealand market had been established at the beginning of the first case, other cases would not have been needed to capture the different boards coming into the market, but still considered to be like.

The sugar case involved switching to suppliers in new countries and did not involve the circumstances outlined in Article 2.5. The only option under New Zealand legislation was to initiate a new case following an application from the New Zealand industry.

As noted above, the incorrect origin on imports of paint brushes was dealt with by NZ Customs under the provisions of the Customs and Excise Act.

New Zealand has used the provisions of Article 2.5 in one case but has no experience of the circumstances outlined in Question 10 of Japan's paper.

III Criteria used for distinguishing between legitimate commercial activities and circumvention

In the three cases that New Zealand has discussed in its papers, it was considered that only the paint brush case was not a legitimate commercial activity, as declaring the incorrect origin on Custom's documents can be considered to be fraudulent.

Shifting supplier to a new country for a product is considered a legitimate business activity and can happen despite the imposition of anti-dumping duties. In the sugar case the importers did shift suppliers because of the duties. The New Zealand industry was required to comply with the provisions of Article 5 of the Agreement to enable a new case could be initiated. Although injury

evidence was based on threat and had some commonality to the previous case, it was important to establish that the sugar being imported from the new countries was in fact like goods and was being dumped.

Plasterboard involves the description of like goods, which some countries would consider a "scoping issue". New Zealand practice is to treat each case as a new product unless the description of the goods in the original notice clearly captures the "new" product being imported. This allows interested parties, particularly exporters and importers to argue their cases on any relevant issue.

IV Criteria used for verifying the probability of continuous dumping and injury

This circumstance is not applicable to New Zealand practice as a complete investigation is carried out in such cases.
